IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14854 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJUBHAI BAVANIHABHAI SANSI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14854 of 2004

MR ARVIND K THAKUR for Petitioner No. 1

MS HANSA B PUNANI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by District Magistrate, Dahod, on 06th of September, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 6th of September, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration six criminal cases registered against the petitioner under the Bombay Prohibition Act, and secondly, the detaining authority took into consideration three in-camera statements of witnesses, as recorded by the sponsoring authority on 16th of August, 2004 and verified by the detaining authority on 02nd of September, 2004, and the identity of the witnesses were not disclosed by the detaining authority, claiming privilege under Section 9(2) of the PASA Act.

3. Six cases came to be registered against the petitioner for the breach of the provisions of the Bombay Prohibition Act. The first case was registered on 31st of July, 2003 at Dahod Town Police Station, second on 19th of September, 2003 at Prohibition Police Station, Dahod, third on 17th of December, 2003 before Rural Police Station, Dahod, fourth on 26th of Febraury, 2004 before Prohibition Police Station, Dahod, fifth on 14th of July, 2004 before Rural Police Station, Dahod and sixth also on 14th of July, 2004 before Dahod Rural Police Station. In all these cases, it was alleged that the petitioner was found in possession of prohibited liquor and was transporting the same. The detaining authority considered exhaustively and thoroughly the investigation papers in all the cases registered against the petitioner and came to the conclusion that the activities of the petitioner of storing, selling and transporting prohibited liquor were the activities of the bootlegging.

4. The detaining authority also considered three in-camera statements of the witnesses, as above referred. First witness narrated the incident occurred before two months of the recording of the statement. The witness, at about 11.00 a.m., was going to inquire about the health of his relative and was returning to his residence, the petitioner accosted him and stated that the witness was providing information to the police. The

witness was also slapped by the petitioner. The petitioner was along with his accomplices, and all of them started beating the petitioner. The petitioner took out gupti and a blow was inflicted on thigh of the witness. The witness raised shouts and people started running helter - skelter. Traffic was disrupted. By act of supplication, the witness could save his skin. The second witness referred an incident occurred before three months from the recording of the statement. The witness had been to village Damrada in his passenger rickshaw and was returning at about 5.00 p.m. The petitioner accosted the witness and stated that his scooter had broken down and stated that the witness should load bulk of prohibited liquor in his rickshaw. On so refusing by the witness, the witness was caught hold of by the petitioner and was beaten. The petitioner took out knife and aimed at the throat of the witness. The witness raised shouts. So people started running helter skelter. The persons locked themselves in their residences. The traffic was disrupted. Ultimately, by act of supplication, the witness could save himself. The third witness referred to an incident occurred before one month from the date of recording of his statement. The petitioner and his accomplice approached the witness at his house and stated that the police was apprehending him and the rickshaw of the petitioner was loaded with bulk of prohibited liquor, and the petitioner intended to unload the bulk of prohibited liquor in the house of the witness. On refusal of witness, he was beaten. One of the accomplices of the petitioner inflicted a blow of sticks on his leg. The traffic was disrupted. Normal life was disturbed in the area. The petitioner threatened to kill the witness while he was leaving him.

5. Relying upon the above materials, the detaining authority came to the conclusion that the bootlegging activities of the petitioner were prejudicial to the maintenance of public order and adversely affecting to the public health. The detaining authority came to the conclusion that the petitioner was headstrong person and after forming gang, was harassing innocent citizens, who become obstacles in executing the illegal activities of selling prohibited liquor. The detaining authority came to the conclusion that the activities of the petitioner were required to be prevented forthwith. After considering the remedies available against the petitioner in general law, the detaining authority came to the conclusion that there was no other alternative except to detain the petitioner under the PASA Act. The detaining authority therefore passed the order to detain the petitioner under the PASA Act, which is under challenge

in this petition.

6. Learned Advocate Mr.Arvind K Thakur for the petitioner and learned AGP Ms.Hansa B Punani for the respondents were heard at length.

7. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether there was credible and cogent material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed and public health was adversely affected.

8. To reach to the subjective satisfaction that the bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of breach of law and order and the cases falling within the category of breach of public order.

9. Referring to the six criminal cases filed against the petitioner under the Bombay Prohibition Act for the possession of prohibited liquor and going through the investigation papers as placed on record, it is found that those six cases came to be filed against the detenu because he was dealing in prohibited liquor. The possession of prohibited liquor is a breach under the Bombay Prohibition Act and hence cases came to be filed. However, merely filing cases under the Bombay Prohibition Act would not result in a conclusion that the activities of the petitioner were disturbing the public order or was affecting adversely to the public health. At the most, the petitioner might have committed breach of the provisions of law, for which the petitioner may be tried and punished if found guilty, but surely the act constituting the offence in dealing in prohibited liquor cannot be said to have affected the even tempo of the life of the community nor the activities revealed through the investigating papers indicate that in the activities alleged through these cases, society at large or section of the society or community or particular community was

involved. Therefore, these cases may be instances of breach of law and order, but cannot be branded as activities disturbing the public order or affecting the public health.

10. Further while referring to the in-camera statements, as recorded by the sponsoring authority and verified by the detaining authority, it must be borne in mind that while reaching to the subjective satisfaction about the alleged activities of the petitioner, it would be necessary for the detaining authority to consider fall out, reach and impact of the activities of the petitioner and thereafter to come to the conclusion that such activities were capable of disturbing the public order. Three incidents, as narrated through in-camera statements, reveal individual disputes than to involve society at large or even disturbing the even tempo of the life of the community. The potentiality of the act alleged through in-camera statements, even from the bare reading of them, are not capable of disturbing the even tempo of life of the community or society at large or section of the society. No widespread danger or harm to the society could be inferred from the statements of the witnesses. Therefore, even after taking them on their face value, those incidents, may be instances of disturbing law and order, which can be taken care of by general law and by no stretch of reasoning, such activities can be branded to be disturbing the public order or affecting adversely to the public health.

11. In the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH 393. The Division Bench of this Court after considering many decisions of the Apex Court, observed in paras 20 and 21 as under :

> "20 The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and Two. Devaki vs. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly in Two. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was highlighted. It was also alleged that people were scared and had run helter-skelter. In spite of such allegations, the Supreme Court held that

they were not cases of maintenance of public order and hence, no action of preventive detention was uncalled for.

21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention, could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again in Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police and Others, 1995 (2) GLR 1268 (Sc), the Supreme Court considered the relevant decisions on point including the decisions in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

12. The present set of facts are squarely covered by the above decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki (supra) and therefore the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

13. In the result, the petition is allowed. The order passed by the District Magistrate, Dahod, on 6.09.2004, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Rajubhai Bavaniyabhai Sansi is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)